IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

RONALD JAMES LAWRENCE,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

No. 22,317

On Appeal from the Judgment of
The United States District Court
For the District of Arizona

BRIEF FOR APPELLEE

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STATUTES

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I.

JURISDICTIONAL STATEMENT OF FACTS

On May 24, 1967, the Appellant Ronald James Lawrence was advised by the Court of the nature of the charge pending against him and of his right to appointment of counsel if he could not afford counsel. The Court then appointed Richard J. Dowall (Clerk's transmittal of record of docket entries).

(Hereinafter the Clerk's record will be referred to as

"RC"; the Reporter's Transcript of the testimony at trial will be referred to as "RT," the number following will refer to the page, and the number following "L" will refer to the line; the Appellant Ronald James Lawrence will be referred to as "Juvenile" or "Ronald Lawrence.")

Thereafter the Court explained to the Juvenile his rights, i.e., to Indictment by Grand Jury, and if Indictment is returned, to a trial by jury, but that he could waive those rights and consent to the United States Attorney proceeding against him as a juvenile. The Juvenile then executed a consent which was filed, and the U. S. Attorney then filed an information charging that the Juvenile had committed an act of juvenile delinquency in that he caused the transportation of a stolen motor vehicle in interstate commerce which he knows to be stolen, under the provisions of 18 U.S.C.A., §5031, et seq. Title 18 U.S.C.A. The Juvenile denied the act of juvenile delinquency and the matter was set for trial on July 7, 1967. (RC Docket entries)

On July 7, 1967, trial was held and the Court found the Juvenile did commit the act of juvenile delinquency and set July 21, 1967, as the date for entering judgment (RC Docket entries). On July 21, 1967, the Court adjudged the juvenile guilty of having committed an act of juvenile delinquency and sentenced the Juvenile to the custody of the Attorney General for his minority. The United States District Court has jurisdiction by virtue of the provisions in 18 U.S.C. 2231. This Court has jurisdiction of Appeal by virtue of 28 U.S.C. §1291 and §1294.

II.

STATEMENT OF FACTS

The Government accepts and hereby adopts the Appellant's Statement of Facts, with the addition which will be set out in the argument.

III.

SUMMARY OF ARGUMENT

1. The Appellant's constitutional rights were not denied him when admissions *not* made in response to custodial interrogation were admitted in evidence.

2. The Government had sustained the burden of proving all the acts of juvenile delinquency beyond a reasonable doubt.

IV.

ARGUMENT

1. The Appellant's constitutional rights were not denied him when admissions *not* made in response to custodial interrogation were admitted in evidence.

The Juvenile was placed under arrest by Arizona Highway Patrol Officer, Sgt. William Chewning, in the presence of Patrol Officer Matthews. Matthews testified that he heard Sgt. Chewning advise the Juvenile of the same constitutional rights that he, Matthews, had advised Larry Lawrence of (RT 21, L 7-10). (See what was said by Patrol Officer Matthews to Larry Lawrence, RT 19 L 23 to 20 L 11.)

However, Officer Matthews did not hear Sgt. Chewning have the Juvenile repeat those rights back to him as he had done with Larry Lawrence (RT 21, L 11-12). Special Agent G. Wayne Mack in taking the rest of the information that evening at the Sheriff's Office repeated his rights to him, individually (RT 43, L 1-5). The next morning he was taken before the Justice of the Peace in Safford and advised that the charge pending against him was the interstate transportation of a stolen motor vehicle, and again advised by the Justice of the Peace "that they had the right to remain silent, not make

any statement; anything they did say could be used against him in a court of law; that they had the right to have advice and council from a lawyer before making any statement and a lawyer could be appointed for them later by the Court." (RT 36, L 5-10)

Special Agent G. Wayne Mack then took custody of the Juvenile to transport him to Globe, Arizona, to the nearest available United States Commissioner. While Special Agent Mack was driving the Juvenile, the following occurred:

"In the beginning, there was some comment made by the defendant boasting about the superiority of the Royal Canadian Mounted Police Officers in Canada as compared to the officers in the United States, and further he had an uncle who was with the Royal Canadian Mounted Police. And I said, 'What do you base it on?' And he says, 'Well, we got stopped in four different States, and if the officers had been sharper they could have had us before, before we got stopped in Safford,' and I said, 'Where were you stopped in these four States?' And he said, 'I have said too much already, I'm not saying any more.'" (RT 44, L 8-18)

As was held in *Miranda v. Arizona* (1966) 384 U.S. 436 at page 479, 86 S.Ct. 1602, 16 L.Ed 2d 694, "But unless and until such willingness and waiver are demonstrated by the prosecution at trial, no evidence obtained *as a result of interrogation* can be used against him." As the Trial Court stated:

> "THE COURT: Well, apparently we have wasted an awful lot of time on foundation and now it appears that it was not even the product of conversation but it was something that the witness volunteered to the officer, and I don't think that we have reached the point that, if a witness insists on telling an officer something, that it can't be used. It's only when the defendant is under custody and has attention focused on him. This appears to be something said voluntarily. The Motion to Strike is denied." (RT 47, L 6-14)

It is respectfully submitted that the statement made by the Juvenile was voluntarily made and was not made in answer to any question by the F.B.I. agent.

2. The Government had sustained the burden of proving all the acts of juvenile delinquency beyond a reasonable doubt.

Appellant's Opening Brief asserts that no evidence, either direct or circumstantial, was offered as to knowledge of the Juvenile that the car was stolen and that he in any way was associated with the interstate transportation of the vehicle. As the Trial Court found:

> "THE COURT: The Court finds that the vehicle, 1963 Pontiac convertible, which has been testified about in this case was owned, in May, 1967, by David John Speck, that on the 11th of May, 1967, Mr. Speck had the vehicle at his home in Ontario, Canada; that the vehicle was taken from Mr. Speck's premises without his right or permission; that it was taken with intent to deprive him of his rights and benefits of ownership; that it was transported from Ontario into Arizona; that accordingly it was a stolen vehicle and it had been transported in inter-state commerce. And the Court finds further that the defendant Ronald James Lawrence was a participant in the transportation of the vehicle with his brother and the other passenger of the car; that as such participant, and that he knew the vehicle to have been stolen when it was transported from Canada into the United States and ultimately into Arizona. The Court concludes accordingly that the juvenile did commit the act of juvenile delinquency charged in the Information in this case, and I'm going to have a pre-sentence investigation made in the case." (RT 56, L 14 to RT 57, L 7)

The evidence received at trial showed that the Juvenile was arrested with his brother, Larry Lawrence, driving and a passenger by the name of James Edward Friesman. All three

were from Canada. The vehicle was stolen from David John Speck in Canada. The statement by the Juvenile that they could have been stopped in four states is grounds for the Court's finding that he, the Juvenile, caused the interstate transportation, i.e., he associated himself with the joint venture, i.e., there was a concert of action. *Fuentes v. United States* (9th Cir., 1960) 283 F.2d 537 at 539. The evidence on appeal must be construed in the light most favorable to the Government. *Enriquez v. United States* (9th Cir., 1964) 338 F.2d 165.

V.

CONCLUSION

It is respectfully submitted that the statement made by the Juvenile was voluntarily made and there was sufficient evidence upon which to find that the Juvenile had committed an act of juvenile delinquency.

Respectfully submitted,

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Jo Ann D. Diamos
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Attorneys for Appellee

I certify that, in connection with the preparation of this Brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing Brief is in full compliance with those rules.

Jo Ann D. Diamos
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Three copies of the Brief of Appellee mailed this 5th day of April, 1968, to:

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